

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT BUSIA

CIVIL APPEAL NO.4 OF 2018

BETWEEN

BENSON NGANGA NDIRANGU.....APPELLANT

AND

JOHN OSCAR JUMA.....1ST RESPONDENT

SAMSON OKALL:

T/A DASEMY AUCTIONEERS.....2ND RESPONDENT/INTERESTED

RULING

1. The appellant applicant has moved the court by way of Notice of motion dated 10th July 2018 which is brought under Article 159 (2) of the Constitution of Kenya, sections 1, 1A, 1B, 3,3A and 79G of the Civil Procedure Act and order 42Rule 6 Civil Procedure Rules.

2. He is seeking the following orders:

- a) That the application be certified urgent and heard ex parte in the first instance. (Spent)
- b) That pending the determination of this application inter partes there be a temporary order of stay of execution. (spent)
- c) The appellant be granted time to appeal out of time.
- d) That pending the hearing of the appeal there be a stay of execution for auctioneers' costs.

3. The application was opposed by the respondents who argued that it was an abuse of the court process.

4. If the only issue was who was to pay the auctioneers' costs, I would have agreed with the contention by the respondents. However, on perusing the record, I find that I have no copy of attachment by Dasemy Auctioneers. This therefore raises triable issues. The application is therefore allowed in terms of prayers (c) and (d) with no orders as to costs.

DELIVERED and SIGNED at BUSIA this 29th day of April, 2019

KIARIE WAWERU KIARIE

JUDGE